

## **ARTICLE V NONCONFORMING STRUCTURES AND USES**

### **SECTION 500 NONCONFORMING STRUCTURES AND USES**

#### **500.1 Statement of Intent**

It is the intent of this Ordinance to permit uses of structures and land which were lawfully established under previous regulations, but which do not meet the use and/or bulk regulations of this Ordinance, to continue until they are removed, but not to encourage survival of nonconforming uses. It is further the intent of this Ordinance that nonconformities shall not be structurally expanded except for changes required by law, nor shall the intensity of use be increased.

#### **500.2 Nonconforming Uses and Continuance of Nonconforming Uses**

- A. Any use of a structure or land lawfully established prior to the effective date of this Ordinance that does not conform to the regulations of the district in which it is located, is considered a legally nonconforming use and may be continued except as otherwise provided herein.
- B. All signage lawfully established, which does not conform to the regulations of this ordinance, may continue in use for the periods of time specified in Sec. 1500.7 of this Ordinance.
- C. Any structure for which a building permit has been lawfully granted prior to the effective date of this ordinance may be completed according to the approved plans providing construction is begun within ninety (90) days of issuance of the building permit and diligently pursued.
- D. All property with dumpsters shall conform to the regulations contained in Section 405.5 of this Ordinance. Legally nonconforming dumpsters are not permitted to be continued in use without complying with said Section 405.5; however, legally nonconforming dumpsters existing on or before December 18, 2000:
  1. Within the C-4, Commercial Oldtown District may petition the Zoning Officer for a waiver from compliance with Section 405.5, providing each of the following criteria are satisfied as determined by the Zoning Officer:
    - a. There is not an adequate area on the property to enclose the dumpster
    - b. The area surrounding the dumpster is kept clean and free of rubbish and debris
    - c. The unenclosed dumpster will not be detrimental to or endanger other properties in the immediate vicinity of the subject property, nor be injurious to the use and enjoyment of other properties in the immediate vicinity of the subject property. Factors to be considered by the Zoning Officer include: whether the unenclosed dumpster is visible from other properties in the immediate vicinity of the subject property, and the proximity of any buildings or uses on other properties in the immediate vicinity of the subject property to the unenclosed dumpster.
  2. Within all other zoning districts may petition the Zoning Officer for a waiver from compliance with Section 405.5, provided each of the following criteria are satisfied as determined by the Zoning Officer:
    - a. The dumpster is not visible from any residential district or use
    - b. The dumpster is not visible from the front yard of any commercial or industrial use
    - c. The dumpster is not visible from any public right-of-way
    - d. The area surrounding the dumpster is kept clean and free of rubbish and debris

Said petition for waiver must be made on a form provided by the Planning Office. As part of the Zoning Officer's approval of the waiver from Section 405.5, the Zoning Officer may require additional means of mitigation by the applicant, including landscaping, fencing or other means

deemed necessary by the Zoning Officer. Should the Zoning Officer find that all criteria are not satisfied and deny the waiver, the applicant may apply for a Variation as provided in this Zoning Ordinance. Any waiver granted by the Zoning Officer may be revoked by the Zoning Officer should the property or dumpster no longer comply with any of the criteria stated above, or with any required mitigation. The Zoning Officer shall notify the property owner in writing 30 days prior to the effective date of the revocation.

- E. All property with existing fences in the front yards shall conform to Section 405.3.A.8. All property with existing fences in the side and rear yards that do not conform to Section 405.3.A.8 shall be considered legally non-conforming. (Ord.2004-216-O)

### **500.3 Discontinuance of a Nonconforming Use**

- A. Whenever a nonconforming use has been discontinued for a period of twelve (12) months, then all grandfathered rights are forfeited and any use thereafter shall conform to the district in which the property is located.
- B. Whenever the nonconforming use is a mobile home which is not located in a mobile home subdivision or a mobile home park, then the use may continue for the life of the unit but may not be replaced with another mobile home.
- C. Any use not legally established that is in evidence at the time this Ordinance becomes effective is considered a violation and shall be discontinued unless the use is brought into conformity with all the regulations of this ordinance.

### **500.4 Change or Conversion of a Nonconforming Use**

Change or conversion of a nonconforming use may take place only by means of a Special Use Permit, providing the proposed use is more restrictive and therefore deemed less objectionable to the area in which it is located, and providing the existing parking lot is brought into conformity with landscaping provisions of this Ordinance.

### **500.5 Repairs and Alterations of a Nonconforming Use**

- A. Normal maintenance, including necessary nonstructural repair and incidental alterations, may be made, providing such changes do not expand or intensify the nonconforming use.
- B. Structural alterations may be made providing:
  - 1. The alteration is required by law.
  - 2. The alterations will reduce or eliminate the nonconformity of the use.

### **500.6 Damage and Destruction of a Nonconforming Use**

- A. If there is damage to a structure by any means, to the extent of fifty percent (50%) or more of the replacement value as determined by the City Building Official, then all future use of the property must be in conformance with the regulations of this Ordinance.
- B. If the damage of the structure is deemed to be less than fifty percent (50%) of the replacement value, then the building may be restored and the nonconforming use may be continued. In this event, restoration must be started within a period of ninety (90) days and diligently pursued to completion.

### **500.7 Additions and Enlargements to a Nonconforming Structure**

- A. A structure which is nonconforming with respect to yards, density, Floor Area Ratio, or any other bulk regulated by this Ordinance, shall not be altered or enlarged in any manner which would increase the degree or extent of its nonconformity.

- B. Construction of a vehicle storage garage for a nonconforming residential use is permissible providing bulk regulations of this Ordinance are met.